ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3212 OF 2007

Chandrashekhar Arjun Pillai & Anr. ...Petitioners

Vs.

Hiraman Omkar Chaudhary ...Respondent.

Mr.R.S.Datar for the petitioners.

Mr. P.M.Mokashi for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 25th July, 2007

P.C.

1. The petitioner, who is a decree holder, by this Writ Petition has challenged the rejection of his application to recast the issues.

2. Considering the fact that there is a valid decree which is confirmed even by the High Court. When put up for execution, the opponent obstructed the same by moving an application. The executing Court, therefore, framed certain issues. The decree holder, therefore, moved an application for recasting issue No.1. The same however, was rejected. The controversy, therefore, need to be resolved by putting burden on the opponent when the basic case is that he has independent right, title and interest in the flat.

The learned executing Court, therefore, wrongly rejected the application.

3. After hearing both the parties, the issue which is substituted to issue No.1 is framed as under:-

. "Does the opponent proves that he has got independent right,title and interest in the flat in possession."

4. The impugned order is accordingly quashed and set aside. The Trial Court to proceed on the basis of above re-casted issue No.1 alongwith the other issues. The parties be heard. The petition is, therefore, allowed and is disposed off accordingly.

5. No costs.

(ANOOP V. MOHTA, J.)